



President's Message

LOVE IS IN THE AIR...BUT DO YOU FEEL IT?

Are you familiar with *The Five Love Languages*, by Gary Chapman? To summarize, he suggests that we have a primary language for expressing love and receiving love. If the giver and receiver aren't speaking the same language, then harmony in the relationship is a foregone hope. However, language barriers can be easily overcome, and relationships strengthened. All it takes is awareness and intentionality.

I am completely aware that my love languages are NOT words of affirmation nor gifts. However, my kids and husband respond well to both. So, I've learned to say, "atta girl!" and "good job" on a regular basis, even if it's for something that does not necessarily warrant either in light of my upbringing. Because I'm not a gift-giver nor gift-receiver, I've set calendar reminders for birthdays and anniversaries. I have a closet full of gifts and cards for every occasion and every age. Some of the cards actually make it into the mail from time to time.

My oldest daughter gives and receives with physical touch. She loves to hold my hand and snuggle. I must remind myself that these moments are fleeting and someday I won't have her to hold. So, I put my phone down and cuddle up.

My youngest wants quality time. "Come on, Mommy, let me show you; sit right here." So, I step away from the computer, I go, I see, I sit.

My husband wants quality time... on the golf course... with him driving the cart... I'm a work in progress with a full-time job, two kids, a side gig, and an association. Sigh. I heard NABIP-Fort Worth is hosting a golf tournament on March 27th at Bear Creek Golf Club. Maybe we can swing that as a couple.

What is my language? I'm not sure. I've been told I mumble... But, if I had to speak clearly, I'd say acts of service hits the spot. That's not always the case. I can remember when people would do nice things for me, and I'd think, "I can do that myself," not understanding why I would feel so uncomfortable with their acts of kindness. The older and wiser me knows that I just didn't know how to feel nor respond. This is something which also requires awareness and intentionality.

So, I encourage you to seek out opportunities to show and receive love – not necessarily in the St. Valentines-Cupid kinda way but in the we-all-need-to-be-needed-and-wanted-kinda-way.

Cheers!

Jen Stanley, President



Regulatory & Legislative Updates

LONE STAR STATE UPDATES

NABIP-Dallas GRIP Campaign

We raised \$358.00 for the TAHUPac Administration Fund. This goes directly to help pay our lobbyists, the Meroneys.

Representative Oliverson Files Bills Targeting ESG and Abortion Tourism

January 13, 2023: Press release from Rep. Tom Oliverson, M.D.

Austin, Texas – State Representative Tom Oliverson, M.D. (Cypress) this week filed conservative legislation targeting business practices that are out-of-step with Texas values. House Bills 1239 and 1280 seek to protect Texas industry and ensuring compliance with state law.

House Bill 1239 prohibits insurance companies from using environmental, social, and governance scores (ESG) or diversity, equity, and inclusions factors (DEI) as criteria when setting rates. Insurance companies, at their core, are actuarial powerhouses that are highly skilled at evaluating risk. When institutional investors force insurers into considering subjective external factors, both the Texas economy and its citizens are adversely affected. "ESG and DEI investment practices are negatively impacting our state's economy and the ability of businesses to effectively do business in Texas," said Representative Oliverson. "These arbitrary and undefined criteria are being used to essentially force companies to make decisions that have no bearing on the company and can actually be harmful to shareholder value."

House Bill 1280 prohibits a Texas corporation from deducting healthcare expenses from its franchise tax if that corporation chooses to provide abortion tourism services to its employees. Under current Texas law, an entity subject to the franchise tax may deduct compensation, which includes health care benefits, from its total tax due.

"Since the Supreme Court's Dobbs decision, several companies have announced they will be paying employees' travel expenses to states where the killing of babies through abortion is legal," said Representative Oliverson. "If Texas-based companies choose to engage in this practice, under HB 1280, they will no longer be able to deduct their employee healthcare expenses from their franchise taxes."

Summary of Comptroller Glenn Hegar's BRE ("Biennial Revenue Estimate)

January 9, 2023. The BRE forms the basis of Texas' budget by setting a limit on revenue available for general-purpose spending:

- Texas lawmakers will have \$188 billion in the next budget cycle, which is 26% more than current 2-year cycle.
- Spending limits found in the Texas Constitution and state statute will prevent lawmakers from spending all of it (unless lawmakers "bust the spending cap" which would require a super-majority vote in both chambers) ... the current limit is a 12.3% increase.
- The \$188 billion includes a historic \$32.7 billion in surplus money carried over from the current 2-year budget cycle (2022-23)
- Of the \$32.7 billion surplus, all but about \$10 billion (reserved for highways and the Rainy-Day Fund) is available to spend.
- Speaking of the \$13 billion Rainy Day Fund... unless legislators choose to dip into it this session, that fund is expected to grow to \$27 billion by the end of the 2024-25 budget cycle, driven by increases in oil & natural gas severance taxes
- Overall, state revenues from ALL sources is expected to reach \$342 billion, which includes federal revenues of \$108 billion, and another \$68 billion from revenues like fees which are dedicated for particular purposes, not general spending

Comptroller Hegar said this is a once-in-a-lifetime budget opportunity, and he urged lawmakers to put 7-8% of the revenue aside for future use in a separate "savings account" when revenues will be limited but infrastructure needs will continue.

Regulatory & Legislative Updates

ACROSS THE NATION

Healthcare Happy Hour

Subscribe to the NABIP Healthcare Happy Hour podcast. January's episodes included:

Healthcare items in the year-end omnibus bill, Committee Assignments, M&A for Medicare Agents, CapCon tips and tricks.



Congress is in Session.

[From Alston & Bird's Look Ahead to the Week of January 30](#)

- H.R. 497 – Freedom for Health Care Workers Act (Rep. Duncan – Energy and Commerce). The measure would block the Health and Human Services Department's rule requiring COVID-19 vaccinations for Medicare- and Medicaid-certified providers and suppliers.
- H.R. 382 – Pandemic Is Over Act (Rep. Guthrie – Energy and Commerce). The bill would end the COVID-19 public health emergency, which was first declared by the Health and Human Services Department in January 2020.
- H.R. 139 – SHOW UP Act of 2023 (Rep. Comer – Oversight and Accountability). The bill would require federal agencies to reinstate pre-COVID-19 telework policies and submit a plan to Congress when seeking to expand telework policies.
- H.J. Res. 7 – Relating to a national emergency declared by the President on March 13, 2020 (Rep. Gosar – Transportation and Infrastructure). The resolution would declare an end to the COVID-19 national emergency.

Sign Up for Operation Shouts!

Through Operation Shout, you as a member have the opportunity to participate in this process. As legislative needs arise, you will be prompted by staff to participate in Operation Shout. Participating is quick and easy. When you click on "write" you will have the option of using the message we have already created, which takes less than a minute, or composing your own. Either method is effective and sends a strong message to your member of Congress about the important issues facing us today. You can also check back at any time to view and send archived messages. When engaging in NABIP grassroots operations, remember that we are most effective when we speak with one voice. https://nabip.quorum.us/action_center/

Register for Capitol Conference today!

We are officially less than one month away from our annual Capitol Conference! If you haven't already, register now.

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First-time attendees can get \$200 off when they stay at the Hyatt by emailing meetings@nabip.org.

If you are going: Email keycontacts@tahu.org a screenshot of the results when you plug in your home address to ["Who Represents Me?"](#)

This will help us coordinate Hill visits.



Navigating Benefits in a Post-*Dobbs* Era

Andrew Ky Haynes, Esq.
Brittney Avila, Esq.

Summary of Presentation to
National Association of Benefits and Insurance Professionals
Dallas Chapter
January 18, 2023

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Navigating Benefits in a Post-*Dobbs* Era

Andrew Ky Haynes, Esq.
Brittney Avila, Esq.
Haynes Benefits PC

The *Dobbs*¹ decision, handed down by the Supreme Court of the United States (“Supreme Court” or “the Court”) last June, overturned prior holdings in *Roe v. Wade*²(“*Roe*”), and *Planned Parenthood v. Casey*³(“*Casey*”), which permitted states to regulate abortion at any stage of pregnancy. This has resulted in differing degrees of regulation across the nation. Employers are now challenged with determining how to navigate state lines on a hypersensitive issue.

Background

In 1973, the Supreme Court held that the Constitution, specifically the Due Process Clause, protects a woman’s right to choose to have an abortion. In the 7-2 decision, *Roe* created the trimester framework that had been in place for almost 50 years, outlined below:

- **First Trimester:** States may not regulate the abortion decision, only the pregnant woman and her physician can make that decision.
- **Second Trimester:** States may impose regulations on abortion that are reasonably related to maternal health and welfare.
- **Third Trimester:** States may prohibit or regulate abortions once the fetus reaches the point of “viability,” so long as the laws contain exceptions for cases where abortion is necessary to save the life of the mother.

In 1992, the Court re-affirmed *Roe*, holding that the state of Pennsylvania placed an “undue burden” on a woman seeking an abortion by requiring that she notify her husband in advance of the procedure.⁴

Dobbs v. Jackson Women’s Health Organization (2022)

On June 24, 2022, the Supreme Court was asked by Jackson Women’s Health Organization, an abortion clinic in Mississippi, to answer the critical question – does the Constitution confer a right to obtain an abortion? Specifically, the clinic asked that the Court reaffirm or overturn *Roe*--no half measures.

¹ *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

² *Roe v. Wade*, 410 U.S. 113 (1973).

³ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

⁴ *Planned Parenthood*, 505 U.S. at 833.

In the majority opinion, Justice Alito stated, “[t]he Constitution makes no reference to abortion and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of *Roe* and *Casey* now chiefly rely – the Due Process Clause of the Fourteenth Amendment.” Justice Alito called for the issue of abortion to return to the states and their respective elected representatives.

In a concurring opinion, Justice Kavanaugh stated that he did not believe it would be possible for a state to bar a resident from travelling to another State to obtain an abortion, as there is a constitutional right to interstate travel. Dissenters Justices Breyer, Sotomayor, and Kagan relied on the position that subsequent legal developments have only reinforced *Roe* and *Casey*.

Responses to *Dobbs*

That July, President Biden signed an Executive Order, which included directives aimed at protecting access to reproductive health care services. Biden also stated he would seek to codify *Roe*’s protections through federal legislation. The Senate failed to reach the 60-vote threshold needed to write a “constitutional right to abortion” into federal law. However, separate legislation has since been introduced to codify *Roe*.

Abortion clinics in “*Roe*” states prepared to serve women from nearby “*anti-Roe*” states by offering telehealth visits for pre-operative reproductive health matters related to abortions. However, if such remote care benefits are considered permissible in “*anti-Roe*” states, patients would still need to travel for the procedure.

When *Dobbs* gave the States the authority to regulate abortions, thirteen states⁵ already had “trigger laws” in place that almost immediately outlawed the procedure. Eight states⁶ have blocked the bans on abortions. Other states⁷ have placed a limit on what week of pregnancy the abortion must take place by. In addition, some states have created laws which criminalize abortion, which leads to the question of ERISA preemption. ERISA generally preempts any and all state laws.

Employer Responses

Some national employers with significant presence in Texas have responded to *Dobbs* by offering abortion travel benefits. For example, Amazon stated it will pay up to \$4,000 annually in travel expenses for non-life-threatening medical treatments, including elective abortions. While travel benefits are not new, abortion travel benefits are. The *Dobbs* decision has prompted reactions by employers before any significant guidance has been offered from agencies or courts.

⁵ Texas, Oklahoma, South Dakota, Idaho, Wisconsin, Missouri, Arkansas, Louisiana, Kentucky, Tennessee, Mississippi, Alabama, and West Virginia.

⁶ Montana, Wyoming, North Dakota, Utah, Arizona, Iowa, Indiana, and Ohio.

⁷ Georgia (6-weeks), Utah, Arizona, North Carolina, and Florida (15-18-20 weeks).

There are different ways to structure the abortion travel benefits. Employers could choose to add the benefit to their current employee benefit plan or establish a separate abortion travel benefit plan altogether. While fully insured health plans are subject to the laws of the state in which the employer/plan resides, self-funded health plans have more leeway in crafting benefit plans.

Even still, will abortion travel benefits run afoul of certain “*anti-Roe*” state laws? Texas and Oklahoma have civil enforcement laws which classify employer reimbursement of abortion expenses as unlawful aiding and abetting of an abortion. States willing to punish anyone involved with seeking, providing or enabling abortions are sure to deter individuals from traveling for related care, even if made available by their employer. However, this doesn’t seem to have swayed a number of major national companies with store fronts, employees, and even headquarters located in the state of Texas.⁸

HIPAA Considerations

While there is no “sliding scale” when determining what information is considered protected health information (“PHI”) under HIPAA, abortion-related information is no doubt ultra-sensitive, similar to HIV status. This makes the decision to offer (or administer) abortion travel benefits even more complicated.

When structuring abortion travel benefits, one of the first questions to consider is who the plan administrator/covered entity will be. The answer may expand the reach of existing HIPAA policies beyond the current major medical plan to an ancillary benefit plan, separate travel plan, or the employer itself. Certain healthcare providers and plan service providers are now offering to administer abortion travel benefits, which may reduce HIPAA liability to the employer or plan. These HIPAA issues are complex, and should be discussed with counsel.

Medication Abortion and Emergency Contraception

With *Roe* overturned, prescription drugs that prevent and/or terminate pregnancies are and are likely to remain the next major contention between abortion activists and opponents. Emergency contraception can prevent pregnancy when taken shortly after unprotected sex. Four emergency contraception products have been approved by the FDA and on the market for years. In 2013, Plan B One-Step, was approved for over-the-counter sale. Medication abortion has been available in the US since 2000, when the FDA approved the use of mifepristone for early nonsurgical abortion.

On January 3, 2023, the FDA announced that certified pharmacies can dispense mifepristone to individuals who have a prescription from a certified provider. This removes a prior requirement that patients pick up the medication in person. Courts have historically deferred to the FDA when determining whether a drug is safe/appropriate for its intended use(s). The manufacturer of

⁸ For example, Amazon, Tesla, Dick’s Sporting Goods, Starbucks, Microsoft, and Gucci all have locations in Texas, and have publicly announced various abortion travel benefit offerings for employees without access to such care in their home state.

mifepristone, and other activist groups, have begun challenging restrictive state laws under the premise of FDA preemption. The FDA has urged a Texas judge presiding over a similar case not to challenge or overturn its January 3rd announcement.

Unintended Consequences and Other Considerations

In a recent case, *Planned Parenthood South Atlantic v. State of South Carolina, et al.*, the court ruled that the state’s 6-week abortion ban violates a woman’s right to privacy under the state constitution. Similar suits have been filed in 19 other states. California, Michigan, and Vermont have explicitly created abortion rights and protections in their state constitutions.

Under Revenue Ruling 73-201, abortion is considered “medical care” for purposes of IRC Section 213(d) and is therefore deductible. However, amounts expended for illegal operations or treatments are not deductible, so issues will likely arise in states where abortions have become illegal. We currently await guidance from the IRS on Revenue Ruling 73-201, post-*Dobbs*.

The House introduced the Equal Access to Reproductive Care Act in June 2022, which would modernize “the federal tax code to allow equal treatment to those using assisted reproductive treatments and surrogacy arrangements regardless of sexual orientation, gender identity, and when applicable, ability status.” This bill is currently with the Ways & Means Committee.

A popular TV series recently released an episode⁹, which showed a dramatized depiction of navigating state lines and other post-*Dobbs* implications. Issues discussed included:

- Racial and economic disparities¹⁰;
- Health implications of various types of ectopic pregnancies;
- Health care providers forced to decide whether to be the “first” in their state to determine what is considered “life threatening” or a “medical emergency”; and
- Characterization of the most impacted area in the US, Southern Illinois, as it nearly borders five states that currently have abortion bans in place.¹¹

In response to this reality, the Illinois governor recently signed a measure into law shielding out-of-state visitors seeking abortions, and those who provide the abortions, from legal action.

Next Steps

Dobbs shall remain the law of the land for the foreseeable future. Employers should carefully review their plans and employee populations to determine how to appropriately respond.

⁹ Greys Anatomy, Season 19: Episode 5.

¹⁰ Women of color are more likely than white women to have an ectopic pregnancy by almost 50%. Women of lower socio-economic status already receiving health care and education from clinics will no longer be able to do so in *anti-Roe* states that have either pulled their funding, or enacted civil or criminal enforcements.

¹¹ Arkansas, Missouri, Tennessee, Kentucky, and Mississippi.

Employers should seek counsel when determining the risks and benefits of providing abortion travel and related benefits, employee desires for such benefits in the industry and current labor market and how to properly structure such benefits.

The content herein is provided for educational and informational purposes only and does not contain legal advice. Please contact Haynes Benefits PC at (816) 875-1919 or avila@haynesbenefits.com if you have any questions about abortion travel benefits, compliance requirements applicable to employee benefit plans, or other HR compliance matters.

Dated: January 31, 2023

Thank you, once again, to our Education Revolution Sponsors:



Upcoming Events

MONTHLY MEETING LINE-UP

3rd Wednesday of Each Month: 11:30-1:15

Luncheon sponsored by

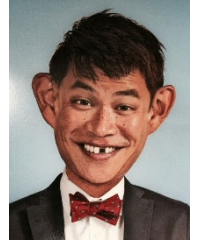


The Insurance Exchange

February 15: How NOT to blow up your client (and other Level-Funded tips)

CE Information: Comedy CE; 1 hour; Course Number 132599

As level funding becomes more and more mainstream and more and more small employers look to this option to save them money, more and more options have come to market. It is important to understand the necessary protections that clients will need as the shift from fully insured to level-funded (self-insured) shifts the fiduciary responsibility to the employer. Brokers and employers need to demand the most comprehensive protections when they consider this option.



Mark Bellman brings his years of experience, his sense of humor, and his love for consumer awareness during what's sure to be a captivating presentation. It is impossible to recall a time when Mark has left the stage without leaving the audience wanting more...

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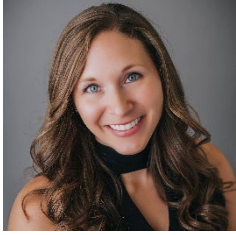


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Upcoming Events



March 15: Utilizing the 3 “Avenues” of Facebook to Market your Business.

Join Leslie Shields, of The Shields Agency, and Shyanne Pruit, marketing creator (and NABIP-Dallas’ website designer!!!) in learning how these two women have used social media to grow their businesses.



April 19: The Good, The Bad, and the Benefits with Mallory Herrin

As trusted advisors, many brokers are hands on with clients when it comes to administrative HR tasks that would typically be handled by an in-house HR professional. However, outsourcing these tasks may be a better option. HR professionals and brokers coupled together can create an advantageous. Join Mallory Herrin to get an insider’s perspective.

July 19 Medicare Summit Learn the Solutions to Selling the Problems

Keynote Speaker Greg Gurbikian, *Sell the Problem, Not the Solution & The Only Medicare Book You Need.*

Greg Gurbikian is the co-founder and CEO of Healthcare Solutions Direct, a top-rated Medicare Insurance Agency primarily servicing the senior market. He has brought 20+ years of sales experience to help create a team of sales professionals dedicated to making the client experience as Simple As 1-2-3.

His passion lies in developing sales professionals to think of the sales process as a relationship and not just a transaction. He believes everyone is born a salesperson, but most have been taught the wrong way to close. He is the author of “The Only Medicare Book You Need”, and the best-selling sales book “Sell The Problem Not The Solution.”

He also has a line of training materials for all sales professionals to be more successful in their sales process.



Whether you are a seasoned sales professional, sales manager, or business owner there is something you can learn by following Greg. If you are just getting started in sales, now is the perfect time to connect and follow Greg on social media. When not working at the office Greg likes to read, travel, and spend time with his wife and two kids.

Dallas Board Meetings – Noon on the 2nd Wednesday of Each Month

Open to all members. See the log-in information from our [Calendar](#).

IN A CE CRUNCH?

Not all of our Dallas meetings feature Continuing Education credit. That’s ok! The Lonestar Virtual Chapter offers CE – FOR FREE – from the comfort of your own home. | [Register at www.lonestarahu.org](http://www.lonestarahu.org).

New Members & Membership Benefits

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